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IN THE

Supreme Court of the United States

PAYSOFF TINKOFF,
Plaintiff-Appellant,

vs.

NIGEL D. CAMPBELL, etc., et al.,
Defendants-Appellees.

No. 1263

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

PAYSOFF TINKOFF, *Pro Se.*
Plaintiff-Appellant.

PAYSOFF TINKOFF,
Ph. Hol. 5533.

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PAYSOFF TINKOFF,
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vs.

NIGEL D. CAMPBELL, etc., et al.,
Defendants-Appellees.

No. 1263

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

I.

Jurisdiction and Orders Appealed From.

This is an appeal from an order of the United States Circuit Court of Appeals for the Seventh Circuit, entered on December 23, 1946, which affirmed the judgment of the Trial Court below, and also from the further order denying the Petition for Rehearing, entered on January 18, 1947.

II.

Grounds For Issuing The Petition For Certiorari.

The Petitioner alleges that the United States Circuit Court of Appeals for the Seventh Circuit failed to consider, and wholly ignored, the questions raised in the appeal, and that this Court in the exercise of its supervisory jurisdiction, should direct the United States Circuit Court of Appeals to decide the questions raised, briefed and argued before the said Court, same being in substance the following:

1. Whether the Secretary of the Treasury, under the Act of July 7, 1884 (5 U. S. C. A. 261), has the right to exclude an agent of a taxpayer in explaining to the Treasury Department the computations made in an income tax return by an accountant and layman authorized to prepare said returns for the Taxpayer under the Constitution of the United States?

2. Whether the word "Claimant" as used in the Act of July 7, 1884 (5 U. S. C. A. 261), should be given a reasonable construction, limiting the word "Claimant" to mean those who demand a refund of money from the United States, and not to all taxpayers who file income tax returns?

3. This specific question has never been presented to any Federal Court, and therefore no interpretation or construction has been given to the word "Claimant", as used in the Act of July 7, 1884 (5 U. S. C. A. 261).

4. Whether Plaintiff's right to liberty, property and pursuit happiness, as guaranteed by the Federal and State Constitutions, were violated in this proceeding, in that the

Petitioner's contracts with the Taxpayers for whom the returns were prepared, were interfered with by the Government, in that the Plaintiff was prevented from explaining the computations in such returns to the Government, pursuant to his contract with the Taxpayers?

5. The other questions raised before the Circuit Court of Appeals, brief and argued, but wholly ignored by the Court, were the following:

(a) Did the Trial Court err, as a matter of law, in denying Plaintiff's motion to strike the Defendant's answer to the amended complaint?

(b) Did the Trial Court err, as a matter of law, in granting the Defendants' motion to dismiss, made at the close of the Plaintiff's case?

(c) Did the Trial Court err, as a matter of law, in denying Plaintiff the right to have a pre-trial examination of various Defendants and other witnesses, said requests being supported by verified Petitions?

III.

Summary Statement of the Facts.

The Petitioner, Paysoff Tinkoff, as a layman and an accountant, prepared income tax returns in the years 1943 and 1944 for several hundred taxpayers. That the Petitioner's contracts provided that the adjustments and computations made by the Petitioner with the taxpayer would be explained to the Office of the Collector of Internal Revenue, or the Internal Revenue Agent in Charge, when examined.

That the Office of the Collector of Internal Revenue, when

examining taxpayer's returns, advised the said taxpayers that the Petitioner was disbarred by the Treasury Department, and was an unfit person to deal with, and that as a result thereof numerous contracts were breached by many taxpayers; and that the said Office of the Collector in Internal Revenue further refused to allow your Petitioner, for the taxpayers, who were willing to have Petitioner represent them as a layman and accountant, before the Office of the Collector of Internal Revenue, to appear before the said office and explain the adjustments and computations in said returns.

That an injunction was prayed for in the Petition, to restrain the Collector from causing Petitioner's contracts from being breached, and at the close of the Plaintiff's case the Court allowed the Defendants' motion to dismiss and denied the injunction, the Defendants contending that only licensed agents or attorneys of the Treasury Department could appear before the Office of the Collector of Internal Revenue, and that "Claimant" included Taxpayer.

IV.

POINTS AND AUTHORITIES.

(A) The word "Claimant", as used in the Act of July 7, 1884 (5 U. S. C. A. 261), means a person who has a right to demand money from the United States.

Hobbs v. McLean, 117 U. S. 567; 29 L. Ed. 543.

The Conqueror, 160 U. S. 110, 123.

Crane v. Commissioner, U. S. Sup. Ct. (Apr. 14, 1947).

(B) A Claimant does not include a Taxpayer. A Taxpayer means "any person subject to the Act imposed by this Title."

U. S. Internal Revenue Code, Sec. 3797(14).

(C) Claims for Refund are specifically provided for in Sec. 322 of the Internal Revenue Code, and the Commissioner of Internal Revenue has created a special Form, No. 873, entitled "Claim for Refund", for recovery of any overpayments by a Taxpayer.

U. S. Internal Revenue Code, Sec. 322.

(D) The right of a person to pursue a lawful occupation or calling is a property right.

People v. Steele, 231 Ill. 340, 346.

In Re: Opinion of Justices, 208 Mass. 619; 94 N. E. 1004.

Sheldon v. Frazer, 320 Ill. 253, 266.

(E) The liberty of contracting is both a liberty and a property right.

People v. Steele, 231 Ill. 340, 341.

(F) Appellant is entitled to have an Appellate Court decide the substantial points assigned as errors, and argued in the briefs of both Appellant and Appellees.

21 C. J. S. 406, Note 93.

4 C. J. S. 87.

(G) Income Tax Acts should be construed in their Ordinary meaning.

Crane v. Commissioner, U. S. Sup. Ct. (Apr. 14, 1947).

Old Colony R. R. Co. v. Commissioner, 284 U. S. 552, 52 S. Ct. Rep. 211, 213.

V.

ARGUMENT.

A.

A Claimant is a person who has a right to demand money from the United States.

The Act of July 7, 1884 (5 U. S. C. A. 261) uses the word "Claimant" at least six times, and it evidently was the intention of Congress that those persons who represented Claimants before the Treasury Department should be licensed by the Secretary of the Treasury.

The Supreme Court of the United States in the case of *Hobbs v. McLean*, 117 U. S. 567, says as follows:

"What is a claim against the United States is well understood. *It is a right to demand money from the United States.*" (Italics Supplied).

This case has been cited by this Court and other Courts, both State and Federal, as authority for the fact that a claim against the United States is a right to demand money from the United States.

The Internal Revenue Code under Sec. 3797(14), specifically states that a taxpayer is a person subject to a tax imposed by this title.

A taxpayer must file, under the Internal Revenue Code, not only income taxes, but also gift taxes, estate taxes, admissions tax, and all other specified taxes enumerated in the Internal Revenue Code, which total hundreds in number.

The present Income Tax requires at least 40 millions people to file returns as taxpayers, and no one can say that each taxpayer is a claimant against the United States. This is the point which the Collector maintained, and which was approved by the trial court and the Circuit Court of Appeals.

The Internal Revenue Code further provides, under Section 322,, for certain documents to be filed in order to obtain a refund of any and all kind of taxes or import duties overpaid, and the Commissioner of Internal Revenue has specifically provided a special form entitled "Claim for Refund", No. 873.

It is, therefore, the Petitioner's contention that the Secretary of the Treasury has no power to license anyone to appear for any taxpayer who is not a claimant, and that a taxpayer, as a resident and citizen of the United States, has a right to employ any individual to prepare his return, and has the further right to have such individual preparing his return act as his agent in explaining the computations and adjustments made in said return, to the Collector of Internal Revenue, which has been denied in this case. Such action of the Court below was error.

The Supreme Court of the United States in the case of *The Conqueror*, 160 U. S. 110, on page 123 said, in defining the word "Claimant" as used in that case:

"The word claimant is obviously used in its technical sense, to stand for the owner of the property seized, for a penalty or forfeiture, under previous sections of the act."

B.

The petitioner, as a layman and accountant, has a right to engage in any lawful vocation, and to enjoy the benefits therefrom, and to make binding contracts incidental thereto, and the deprivation of such rights by the Collector of Internal Revenue violates the petitioner's rights to life, liberty, property and the pursuit of happiness.

This Court has held from time immemorial that every person of the United States is guaranteed under the fifth amendment to the Constitution, life, liberty, property and the pursuit of happiness, and the enjoyment thereof, and is not to be deprived of the same without due process of law.

The Petitioner contends that as a layman contracts were made with numerous taxpayers, which provided that the computations and adjustments in the taxpayers' returns prepared by the Petitioner should be fully explained to the Collector's Office, when the same are audited, and this right was deprived of Petitioner by the Office of the Collector when the said returns were audited, on the ground that the Petitioner was not licensed by the Secretary of the Treasury, and that as a result thereof numerous taxpayers breached their contracts with the Petitioner, and others refused to return to Petitioner to assist them in any manner whatsoever.

This action by the Collector was a violation of the Petitioner's constitutional rights, guaranteed under Article V, aforementioned.

The Supreme Court of Massachusetts in *In Re Opinions of Justices*, 208 Mass. 619, 94 N. E. 1044, said:

"The right of acquiring, possessing, and protecting property, and of enjoying life, liberty or property, se-

cured by the State and Federal Constitutions, includes the right to use one's powers and faculties in any reasonable way for the promotion of his interests, and the right to make contracts with others; and such rights can be regulated by the legislature, in the exercise of the police power, only in the interest of the public health, safety or morals, and in a restricted sense in the interest of the public welfare."

The Supreme Court of Illinois, in the case of *People v. Steele*, 231 Ill. 340, 346, said:

"Liberty, in the constitutional sense, means, not only freedom from servitude and restraint, but embraces the right of every man to be free in the use of his faculties, and to adopt such a vocation as he may choose, subject only to the restraint necessary to secure the common welfare; and the right of every man to choose his own occupation is intended in the constitutional right to the pursuit of happiness."

and also on page 345, the Court said:

"The right of every man to choose his own occupation, profession or employment, though not expressly guaranteed by the constitutions, is included in the right to the pursuit of happiness. * * * The privilege of contracting is both a liberty and a property right and is protected by the constitution."

The Supreme Court of Illinois in the case of *Frazier v. Shelton*, 320 Ill. 253, in holding that the practice of accounting is a private business not affected with a public interest, that the interference of such practice is a violation of the constitutional rights not only of liberty and property, but also the pursuit of happiness, on page 266 said as follows:

"The right to follow any of the common occupations of life is an inalienable right. That right is one of the blessings of liberty, and is accorded as a privilege to the citizens of the United States by the preamble to the Federal Constitution, and by the Declaration of

Independence, under the language 'pursuit of happiness.' The right of a citizen to pursue ordinary trades or callings upon equal terms with all other persons similarly situated is a part of his right to liberty and property. * * * Liberty as used in the constitution, embraces the free use by all citizens of their powers and faculties, subject only to the restraints necessary to secure the common welfare. The right to contract is both a liberty and a property right. * * * It is, of course, well established that the right to liberty, property and the pursuit of happiness is subject to the reasonable exercise of the police powers of the States."

The Petitioner therefore contends that his constitutional rights to life, liberty, property and the pursuit of happiness, and also the right and liberty of contracting, have been violated by the Collector's Office in denying your Petitioner the right to perform and execute his contracts with the taxpayers, in explaining the computations and adjustments on the taxpayer's returns, which were prepared by the Petitioner for the taxpayers, when the said tax returns were being audited and examined by the Collector's Office.

C.

The petitioner was entitled to have the substantial questions raised on his appeal, relating to the merits of the case, decided by the Circuit Court of Appeals, and as the Circuit Court of Appeals wholly ignored these substantial questions on the appeal, this court has the supervisory power to remand the case for decision of the substantial questions presented.

A reading of the Opinion of the Circuit Court of Appeals shows that said Court wholly ignored the substantial questions raised by your Petitioner on appeal, relating to the merits of the appeal, to-wit, (1) whether error was com-

mitted in ruling, as a matter of law, that a taxpayer was a Claimant; (2) in allowing the Defendants' motion to dismiss at the close of the Plaintiff's case, on uncontradicted testimony; (3) in denying the Petitioner a right to a pre-trial examination.

These questions were specifically presented to the Court by assignments of error, and argued in the briefs of both Appellant and Appellees thoroughly, and were wholly ignored by the Circuit Court of Appeals.

As the Statute allows appeals to the Circuit Court of Appeals, these questions submitted to the Court should be decided by the Court, and failure so to do constitutes prejudicial error to your Petitioner (21 C. J. S. 406; 4 C. J. S. 587).

D.

Conclusion.

The Petitioner respectfully submits that this question as to taxpayers having agents not licensed to practice before the Treasury Department, who have prepared the Taxpayers' returns, appear before the Collector's Office, or its other branches of the Treasury Department, to explain the computations or adjustments in the returns prepared by such agent, is guaranteed by the Fifth Amendment of the Constitution of the United States; and that the power given to the Secretary of the Treasury is to license attorneys and agents regarding "Claimants" under the Act, and no others. The Secretary of the Treasury has no power to adopt any rules regarding admissions of agents of taxpayers, who are not claimants.

As shown above, a taxpayer is separate and distinct from a claimant. The law imposes obligations and penalties upon all taxpayers, but not upon all claimants, and although all claimants must be taxpayers, yet not all taxpayers are claimants.

The question presented by your Petitioner relating to Taxpayer's representation by an agent without a license will, in fact, affect practically forty million Taxpayers, and the present construction of the Act by the Secretary of the Treasury is that only licensed attorneys, and agents, can appear for Taxpayers, and no one else—not even an attorney, a certified public accountant, any Judge of this Court, or State or Federal Court,—could appear before the Treasury Department or its branches, unless he had received a license from the Treasury Department. Such a construction is far beyond the intention of the Congress when this Act was passed limiting representation to Claimants only.

It therefore follows that the Secretary of the Treasury has no power to enact any Rule or Regulation relating to representation before the Department, of a taxpayer who is not a "Claimant"; and therefore a taxpayer has the right to appear before the Treasury Department to explain any items in his return, by his representative, without obtaining a license from the Secretary of the Treasury.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that justice may be done, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the Circuit Court of Appeals, and finally reverse it.

PAYSOFF TINKOFF,
Petitioner, Pro Se.

E.

ADDENDA.

**Income Tax Acts should be construed in their
Ordinary Meaning.**

This Court in the case of *Crane v. Commissioner* promulgated April 14, 1947 (1947 Prentice Hall page 72009), held that the word "property" as used in Section 111(b), and 113(b) should be given its "ordinary" meaning, when it said in part:—

(pg. 72011)

"In the first place, the words of statutes—including *the revenue acts*—should be interpreted where possible in their ordinary, everyday senses" (Italics supplied.)

(pg. 72013)

"Quite obviously, the word 'property' used here with reference to a sale, must mean 'property' in the same *ordinary* sense intended by the use of the word with reference to acquisition and depreciation in sec. 113 . . ."

In *Old Colony Railroad Co. v. Commissioner*, 284 U. S. 552, 52 S. Ct. Rep. 211, on pg. 213 this Court said:

"The legislature must be presumed to use words in their known or ordinary signification * * * The popular or received import of words furnishes the general rule for the interpretation of public laws * * * 'the plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover.' *This rule is applied to taxing acts.*" (Italics supplied.)

Therefore the word "Claimant" should be given its ordinary meaning, referring to one who makes a claim or demand to recover what is due him, and does not refer to all taxpayers, who legally must file income tax returns, and who pay taxes, instead of demanding a return of taxes, when a return is filed.

PAYSOFF TINKOFF,
Plaintiff-Appellant, Pro Se.

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

No. 8962

October Term and Session, 1946

PAYSOFF TINKOFF,

Plaintiff-Appellant,

vs.

NIGEL D. CAMPBELL, Collector of
Internal Revenue, et al.,
Defendants-Appellees.

Appeal from the Dis-
trict Court of the
United States for
Northern District
of Illinois, Eastern
Division.

December 23, 1946

Before Sparks and Kerner, Circuit Judges, and Lindley,
District Judge.

Sparks, Circuit Judge. Appellant is a disbarred attorney. Since his disbarment he has established offices in which he acts "*as a layman and accountant, and not as an attorney, certified public accountant or public accountant, or as an attorney or agent licensed to practice before the Treasury Department.*" His business in part consists of advising taxpayers in filling out income tax returns. Ap-

pellee, as Collector of Internal Revenue for the First Collection District of Illinois, acting under the authority of Section 7(d) of Treasury Department Circular No. 230, published pursuant to 5 U. S. C. (1940 Ed.), section 261, has refused to permit him to represent taxpayers in explaining adjustments and computations in their returns or to accompany them upon interviews necessitated by such returns. Appellant contends that this action unduly restricts his constitutional rights of liberty, property and pursuit of happiness, and accordingly sued to enjoin the Collector from interfering with his rights to conduct his business as a layman, and for other relief.

We find no merit whatever in any of the contentions raised by Appellant and are fully in accord with the action of the District Court in dismissing the petition for injunction.

Judgment

Affirmed.

ACT OF JULY 7, 1884 (5 U. S. C. A. 261).

“That the Secretary of the Treasury may prescribe rules and regulations, governing the recognition of agents, attorneys and other persons representing *claimants* before his Department, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such *claimants* valuable service, and otherwise competent to advise and assist such *claimants* in the presentation of their cases. And such Secretary may after due notice and opportunity for hearing suspend, and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any *claimant* or prospective *claimant*, by word, circular, letter, or by advertisement.” (Act of July 7, 1884, 23 Stat. 258; title 5, sec. 261, United States Code.)

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Supreme Court of the United States

PAYSOFF TINKOFF, <i>Plaintiff-Appellant,</i>	}	No. 1263.
vs.		
NIGEL D. CAMPBELL, etc., et al., <i>Defendant-Appellee.</i>		

APPELLANT'S REPLY BRIEF.

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Plaintiff-Appellant,

vs.

NIGEL D. CAMPBELL, etc., et al.,
Defendant-Appellee.

No. 1263.

APPELLANT'S REPLY BRIEF.

Now comes Paysoff Tinkoff, appearing *pro se*, and does herewith file his Reply Brief to the Brief of the Appellee in opposition, filed in this Court.

I.

**Failure of Appellee to Directly Answer the Questions
Raised Herein.**

A careful reading of the Appellee's Brief, in the opinion of the Appellant, shows that the Appellee has failed to spe-

cifically answer the principal contention of the Appellant that a "*Taxpayer*" is a person, separate and distinct from a "*Claimant*", and that the two words as used in the Internal Revenue Code, and also in the Act of July 7, 1884, and in Circular 230, are not similar and interchangeable; and further that Appellant's constitutional rights have been grossly violated.

The Appellant has shown that this Court in the case of *Hobbs v. McLean*, 117 U. S. 567 held that "a claim is a right to demand money from the United States," and a *Claimant* must be a person who is the possessor of that right.

A *Taxpayer* has no right to demand money from the United States, but his duty is to pay money to the United States pursuant to Statute.

A *Taxpayer* becomes a *Claimant* only when the *Taxpayer* has overpaid the taxes lawfully due from the *Taxpayer* to the Government, and filed a Claim for Refund on Form 843, and other documents seeking its return and recovery, pursuant to the administrative provisions of the Internal Revenue Code, Sec. 322, and the Regulations promulgated thereunder.

The Appellee on pages 9 and 10 of his Brief says that the word "Claim" is sometimes used in a broad sense, and is not always limited to "claims for the return of money," citing *Prigg v. Penna.*, 16 Pet. 539, 615; *So. Pac. R. R. Co. v. U. S.*, 3 8Fed. 55, 56.

This Court in the case of *Prigg v. Penna.* in 16 Pet. 539, on page 615, says:

“What is a claim? It is, in a just juridical sense, a demand of some matter as of right made by one person upon another, to do or to forbear to do some act or thing as a matter of duty.”

The Court in the case of *So. Pac. R. R. Co. v. U. S.*, 38 Fed. 55, on page 57, said:

“Indeed, money demands, *except perhaps in the Treasury Department*, constitute but a small fraction of the ‘claims’ or ‘matters’ pending in the Executive Department.” (Italics supplied.)

In this case, the Court specifically said that in the Treasury Department “a claim is a money demand,” when the Court said “Indeed, money demands, *except perhaps in the Treasury Department*” constitute a small fraction of the claims, in other Executive Departments.

The Appellant admits that a “claim” can include a right for the return of property, as well as the return of money, as stated in the cases aforementioned; but the word “Claimant,” as used in the Act of July 7, 1884, empowering the Secretary of the Treasury to promulgate regulations regarding attorneys and agents representing “claimants,” can only mean “one who has overpaid monies to the United States Treasury in excess of that lawfully due the United States Treasury.”

Therefore, the Secretary of the Treasury has jurisdiction over representatives of “Claimants”, seeking return of refunds from the United States Treasury; and has no jurisdiction over “Taxpayers” or their representatives, when seeking to show that their tax return, as filed, is true and correct.

II.

The Appellant's Constitutional Rights of Liberty, Property and the Pursuit of Happiness Have Been Violated.

The Appellee has wholly ignored the Appellant's contention that his constitutional rights, as guaranteed by the Fifth Amendment of the Consitution, to-wit, "No person shall be * * * deprived of life, liberty or property without due process of law"; and that "life, liberty and the pursuit of happiness are inalienable rights guaranteed by the Declaration of Independence."

The record shows that Appellant's contracts have been breached by the various Taxpayers, due to threats and statements made to the Taxpayers by the Appellee—the Collector of Internal Revenue—and that the Taxpayer's present vocation as a "Tax Accountant" is one guaranteed by the Constitution of the United States, and is not subject to regulation, State or Federal, as not being affected with public interest; and that the Appellant's business, as a "Tax Accountant", has been and is greatly impaired, due to the conduct and acts of the Appellee; and that Appellant has been unable to enforce his contracts with the Taxpayers, because the Appellee specifically denies the Appellant the right to represent the Taxpayers,—before the Office of the Collector—solely to show that the Taxpayers' Tax Return, as filed, is true and correct.

The Appellant's right to use his faculties to make a living, and to support his family and himself, has been greatly impaired by the acts of the Appellee; and if such acts of Appellee are continued, Appellee will be deprived of his opportunity to use his faculties to earn a livelihood, in violation of the Fifth Amendment to the Constitution of

the United States, that "no person shall be deprived of life, liberty or property, without due process of law."

This Court, in the case of *Munn v. Illinois*, 94 U. S. (4 Otto) 113; 24 L. Ed. 77, on page 90, in the Dissent of Mr. Justice Field, in defining liberty, says as follows:

"By the term 'liberty,' as used in the provision, something more is meant than mere freedom from physical restraint or the bounds of a prison. It means freedom to go where one may choose, and to act in such manner, not inconsistent with the equal rights of others, as his judgment may dictate for the promotion of his happiness; that is *to pursue such callings and avocations as may be most suitable to develop his capacities, and give to them their highest enjoyment.*" (Italics supplied.)

This Court in the case of *West Coast Hotel Company v. Parrish*, 300 U. S. 379, on page 392 said:

"Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interest of the community."

This Court in the case of *Liberty Warehouse Company v. Burley Tobacco Growers Co-Op Marketing Association*, 276 U. S. 71, on page 97, said:

"*The liberty of contract guaranteed by the Constitution is freedom from arbitrary restraint—not immunity from reasonable regulation to safeguard the public interest.*" (Italics supplied.)

This Court in the case of *Meyer v. State of Nebraska*, 262 U. S. 390, on page 399, said:

"Without doubt, it (meaning liberty) denotes not merely freedom from bodily restraint but also the right of the *individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up*

children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." (Italics supplied.)

The Supreme Court of Illinois in the case of *Matthews v. People*, 202 Ill. 389, on page 401, said:

"It is now well settled that the *privilege of contracting* is both a liberty, and a property right. *Liberty includes the right to make and enforce contracts*, because the right to make and enforce contracts is included in the right to acquire property. *Labor is property*. To deprive the laborer and the employer of this right to contract with one another is to violate section 2 of article 2 of the constitution of Illinois, which provides that 'no person shall be deprived of life, liberty or property without due process of law.' It is equally a violation of the fifth and fourteenth amendments of the constitution of the United States, which provide that no person shall be deprived of life, liberty or property without due process of law, 'nor deny to any person within its jurisdiction the equal protection of the laws.' " (Italics supplied.)

These constitutional rights, Appellant submits, have been denied to Appellant, and have been grossly violated by the Appellee, in this proceeding.

III.

The Other Matters Raised by Appellant, Not Waived Herein.

The Appellant in this proceeding had the Briefs filed below, certified as part of the Record to this Court, and is submitting to this Court as Exhibits A, B and C of this

Reply Brief, to be distributed to the Justices of this Court, a copy of the three (3) Briefs filed below, and presented and argued before the Court below, to show this Court that the questions presented on page 3 of the Appellant's present Petition for Certiorari, was wholly ignored by the Court below, and are not waived by the Appellant herein.

IV.

Conclusion.

The Appellant respectfully submits that he is entitled to have the Circuit Court of Appeals specifically answer the questions raised before that Court, decided by that Court; and further that the Circuit Court of Appeals was in error, as a matter of law, in holding that a "Taxpayer" is a "Claimant" under the Act of July 7, 1884, and in Circular 230, promulgated by the Secretary of the Treasury under the Act aforementioned.

The above is

Respectfully submitted,

PAYSOFF TINKOFF,
Appellant, Pro Se.

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1263

PAYSOFF TINKOFF, PETITIONER

v.

NIGEL D. CAMPBELL, COLLECTOR OF INTERNAL
REVENUE, AND ORVILLE BACON, DEPUTY
COLLECTOR

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT*

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The District Court filed no opinion. Its findings of fact and conclusions of law are unreported.¹ The opinion of the Circuit Court of Appeals is reported at 158 F. 2d 855.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 23, 1946. A petition for

¹ The petitioner did not file a printed transcript of record. The certified typewritten transcript of record does not contain continuous pagination. Accordingly, page references to the record are not possible.

a rehearing was denied on January 18, 1947. The petition for a writ of certiorari was filed on April 18, 1947. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the court below correctly held that the District Court properly refused to enjoin the Collector of Internal Revenue from enforcing instructions issued by him to the Deputy Collectors and other employees in his office to refrain from dealing with the petitioner as a representative of any taxpayer, the petitioner having been disbarred from practice before the Treasury Department.

STATUTES INVOLVED

Act of July 7, 1884, c. 334, 23 Stat. 236, 258-259:

* * * That the Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. And

such Secretary may after due notice and opportunity for hearing suspend, and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement.

* * * * *

(5 U. S. C. 261.)

Revised Statutes:

Sec. 161. The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. (5 U. S. C. 22.)

STATEMENT

The petitioner, Paysoff Tinkoff, filed in the District Court a bill for injunction against the Collector of Internal Revenue for the First Collection District of Illinois and the Deputy Collector of Internal Revenue. The bill, as amended, was dismissed by the District Court.

The original bill for injunction filed December 8, 1944, contained one count and a second count was added by amendment on September 26, 1945.

The facts alleged in the original bill may be summarized as follows:

That the petitioner is engaged in business as an expert tax accountant with his wife and son; that the petitioner as a layman, and not as an enrolled agent or attorney of the Treasury Department, prepares income tax returns and other federal returns required by law, which are filed with the Collector of Internal Revenue for the First District of Illinois; that the respondents maliciously and willfully and unlawfully conspired to injure, impair, and destroy the petitioner's business by telling various clients of the petitioner that he was not a fit, reliable and trustworthy person to do business with, and that they should have their returns prepared by other accountants or persons enrolled to practice before their department; that those clients have, as a result, refused to continue to have petitioner do any work for them. It was also alleged that Nigel Campbell had directed all Deputy Collectors in the First District of Illinois, numbering in excess of several hundred Deputy Collectors, to advise and inform any clients whose returns were prepared by the petitioner, that he is not a fit and qualified person to prepare an income tax return; that the petitioner's returns would not be considered favorably by the office and that those clients should have their returns prepared by accountants or enrolled practitioners other than the petitioner; and that, as a result, those clients have, without just cause, wilfully

breached their pending contracts with the petitioner.

The bill prayed that the respondents be enjoined from interfering with the right of the petitioner to conduct his business as an accountant and as an ordinary layman, and from advising any of the petitioner's clients that he is not a proper and fit person to prepare income tax returns and from threatening or coercing any of his clients or customers or persons seeking the services of petitioner from continuing his services as an accountant and as a layman.

The additional facts alleged in the second count contained in the amendment to the bill may be summarized as follows:

That approximately two hundred income tax returns of taxpayers, which had been prepared by the petitioner for the years 1943 and 1944, were under investigation by the office of the Collector of Internal Revenue; that those taxpayers have requested and desire the petitioner to discuss the computations on the returns with the office of the Collector of Internal Revenue; that the petitioner has presented himself to the Collector to discuss the tax problems of the various taxpayers, and that the Collector has refused to allow him to discuss these problems for the taxpayers on the ground that all representatives of any taxpayer must be licensed to practice before and be enrolled in the Treasury Department or its various de-

partments and that one not having a license cannot represent a taxpayer.

The amendment to the bill prayed that Collector Campbell be enjoined from enforcing the illegal regulations in preventing the petitioner from discussing with the office of the Collector the various problems and computations relating to the taxpayers' tax returns prepared by the petitioner.

The answers of the respondents to the bill for injunction and the amendment thereto denied all of the material allegations made by the petitioner, but admitted that the Collector of Internal Revenue had refused, in accordance with the law and regulations of the Department, to permit persons not enrolled to practice before the Department to represent a taxpayer. The answer further alleged that on November 27, 1934, the Collector of Internal Revenue for the First Collection District of Illinois, received a letter from the Commissioner of Internal Revenue advising that Paysoff Tinkoff had been disbarred from practice as an attorney before the Treasury Department from and after November 23, 1934, and that pursuant to this communication, the Collector of Internal Revenue, on December 5, 1934, caused to be issued to all officers and employees under his direction and control a memorandum stating that Paysoff Tinkoff had been disbarred from practice as an attorney before the Treasury De-

partment. Affidavits of the respondents and of five other persons were attached to the answers.

The findings of fact and conclusions of law of the District Court may be summarized as follows:

At the time the original bill for injunction was filed in this cause, Nigel D. Campbell was assistant to the Collector of Internal Revenue for the First District of Illinois and is now Collector of Internal Revenue for that district; Orville Bacon was at the time of the filing of this suit, and is now, a Deputy Collector of Internal Revenue for that District, and Carter H. Harrison, who was named as a defendant in the original bill for injunction, resigned as Collector of Internal Revenue for the First Collection District of Illinois on December 31, 1944.

The Collector of Internal Revenue for the First Collection District of Illinois, the Deputy Collectors, and other employees under the Collector have denied the petitioner the right to practice before any of the employees of the office of the Collector of Internal Revenue for the First Collection District of Illinois. The petitioner is now, and has been since November 27, 1934, disbarred from practice before the Treasury Department of the United States Government. The petitioner has not proved that the acts of the respondents, or any of them, were illegal or unlawful.

The District Court concluded as a matter of law that the petitioner had failed to submit sufficient evidence to substantiate the allegations contained

in his original bill for injunction and the amendment to the bill for injunction, and that under the Act of July 7, 1884, *supra*, and the regulations of the Treasury Department, promulgated in accordance therewith, the Collector's office is authorized to refuse to permit persons not enrolled to practice before the Treasury Department to practice therein. The court accordingly entered an order decreeing that the issues in this cause were found in favor of the respondents and against the petitioner and that the cause be dismissed. The Circuit Court of Appeals affirmed the judgment of the District Court.

ARGUMENT

1. The decision below is correct. Treasury Department Circular No. 230 (as revised to October 23, 1941), 1942-1 Cum. Bull. 367, provides for the enrollment of attorneys and agents entitled to practice before the Treasury Department. Section 2 (b) of Circular No. 230 defines practice before the Treasury Department "to comprehend all matters connected with the presentation of a client's interests to the Treasury Department" and Section 2 (a) provides that no person shall be eligible to "practice" before the Treasury Department unless he is properly enrolled. It is not denied that Circular No. 230 is designed to prohibit any person who is not enrolled or who, like the petitioner, has been disbarred from practice, from representing any client before the Treasury

Department. Nor is it denied that Circular No. 230 is sufficiently broad so as to apply to the representation of persons whose tax liability is being questioned administratively but who are not seeking a refund of taxes already paid.

There is no merit in the contention (Pet. 2-3, 5-11) that the Secretary of the Treasury is without authority to promulgate such a regulation. Circular No. 230 was issued under the authority of several statutes, including Section 161 of the Revised Statutes, *supra*, which, of itself, is sufficient to sustain the regulation of practitioners before the Treasury Department. Cf. *Goldsmith v. Bd. of Tax Appeals*, 270 U. S. 117. For reports on the need for this regulation and on the manner of its operation, see the Annual Reports of the Secretary of the Treasury for the fiscal years ended June 30, 1921 (pp. 130, 131), June 30, 1922 (p. 95), June 30, 1927 (p. 194), and June 30, 1945 (p. 236).

The Act of July 7, 1884, *supra*, which was also authority for the issuance of Circular No. 230, is not, moreover, limited to the regulation of representatives of persons who assert money claims against the United States. No case is cited which construes the word "claimant" in this statute in so limited a manner. The word "claim" is sometimes used in a broad sense and is not always limited to claims for the return of money. *Prigg v. Pennsylvania*, 16 Pet. 539, 615; *Southern Pac. R. Co. v. United States*, 38 Fed. 55, 56 (N. D.

Cal.). To the extent that Circular No. 230 uses the word "claimant" in a broad sense, it represents a continuous administrative interpretation of the statute which has existed since 1921 when Circular No. 230 was first promulgated and, as such, is entitled to great weight in determining the meaning of the statute. *Norwegian Nitrogen Co. v. United States*, 288 U. S. 294, 315.

Accordingly, the court below correctly decided that the Collector of Internal Revenue should not be enjoined from enforcing the provisions of Circular No. 230 and from preventing the representation of taxpayers in his office by a person who was disbarred from enrollment.

2. The other matters raised (Pet. 3), but not discussed, are also lacking in merit. Since the answer stated a valid defense, the motion to strike the answer was properly denied. The District Court was also correct in allowing the respondents' motion to dismiss the complaint after the close of the petitioner's case, the matter having been tried without a jury. Since the petitioner did not prove the allegations that the respondents had conspired to destroy his business and did not show that he was entitled to the relief sought, the action of the District Court was proper under Rule 41 (b) of the Federal Rules of Civil Procedure. Nor was there any abuse of discretion by the District Court in denying the request for a pre-trial examination of certain witnesses since there was no showing that this would

have assisted the petitioner in ascertaining unknown facts, or would have clarified the issues, or would have simplified or shortened the trial. See *Hickman v. Taylor*, No. 47, October Term, 1946, decided January 13, 1947. Finally, the assertion that the Circuit Court of Appeals did not consider the questions presented to it (Pet. 2, 11-12) is altogether unwarranted. The court below, having found "no merit whatever in any of the contentions raised", was not required to discuss those contentions in an extensive opinion.

CONCLUSION

The decision below is correct. No conflict in decisions is presented. Accordingly, further review of the case would not be warranted and the petition for a writ of certiorari should be denied.

Respectfully,

GEORGE T. WASHINGTON,
Acting Solicitor General.

SEWALL KEY,
Acting Assistant Attorney General.

A. F. PRESCOTT, *c*

HILBERT P. ZARKY,
Special Assistants to the Attorney General.

MAY 1947.